

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**Brian M. Zerkel,**

*Plaintiff,*

**v.**

**Case No. 3:19-cv-274  
Judge Thomas M. Rose**

**Andrew Saul, Commissioner of Social Security,**

*Defendant.*

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**ENTRY AND ORDER OVERRULING OBJECTION TO REPORT AND  
RECOMMENDATIONS BY DEFENDANT COMMISSIONER OF SOCIAL  
SECURITY, (ECF 14), ADOPTING REPORT AND RECOMMENDATIONS,  
(ECF 13), REMANDING TO THE SOCIAL SECURITY  
ADMINISTRATION FOR FURTHER CONSIDERATION CONSISTENT  
WITH THE REPORT AND RECOMMENDATIONS AND TERMINATING  
CASE.**

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Plaintiff Brian M. Zerkel filed an action in this Court seeking judicial review of a prior decision by the Commissioner denying his application for Social Security benefits. United States Magistrate Judge Michael M. Newman filed a Report and Recommendations (ECF 13) recommending that the ALJ's non-disability finding be found unsupported by substantial evidence, and reversed and that this matter be remanded to the Commissioner of Social Security. The Commissioner (ECF 14) has filed an objection to the Report and Recommendations.

The Court hereby **ADOPTS** the Report and Recommendations. (Doc. 13).

Pursuant to the fourth sentence of 42 U.S.C. § 405(g) the Court **ORDERS** the instant case

**REMANDED.** The Commissioner's non-disability finding is unsupported by substantial evidence and is **VACATED**. No finding is hereby made as to whether Plaintiff was under a "disability" within the meaning of the Social Security Act. On remand, the ALJ should conduct a full analysis of the Listings and otherwise assess Plaintiff's disability status anew.

The Court **ORDERS** the Clerk to terminate the instant case from the docket of the United States District Court, Western Division at Dayton.

**DONE** and **ORDERED** this Monday, July 27, 2020.

s/Thomas M. Rose

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE